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STATE FOR EB/TPP/MTA/MST AND WHA/CEN
STATE PASS USTR FOR GBLUE
GUATEMALA FOR COMATT MLARSEN AND AGATT SHUETE
SAN SALVADOR FOR DTHOMPSON

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TAGS: ETRD ECON EFIN HO
SUBJECT: HONDURAS NATIONAL TRADE ESTIMATE REPORT 2005

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¶1. The text of the 2005 National Trade Estimate report for Honduras follows.

TRADE SUMMARY

(Note that the following paragraph is to be updated by Washington with USDOC statistics.) In 2003, the U.S. trade deficit with Honduras was $486.4 million, a decrease of $203.8 million from deficit of $690.2 million in 2002. U.S. goods exports to Honduras were $2.826 billion, an increase of $255 million from $2.571 billion in 2002. Corresponding U.S. imports from Honduras were $3.261 billion in 2003, up $135 million from 2002. Honduras is currently the United States' 32nd largest export market.

(This paragraph will also be updated with USDOC statistics.) The stock of U.S. foreign direct investment (FDI) in Honduras in 2002 amounted to $184 million, down 24 percent from 2001. U.S. FDI is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreements

The United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) signed the U.S.-Central American Free Trade Agreement (CAFTA) in May 2004. The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

In 1995, Honduras and other members of the Central American Common Market (CACM) agreed to reduce and harmonize the common external tariff (CET) at zero to 15 percent, but allowed each member to determine the timing of the reductions. In 2002, Honduras lifted tariffs on capital goods and raw materials (including those used for manufacture of pharmaceutical products and agricultural inputs) for those imports produced outside of the CACM. Additionally, tariffs on most non-CACM intermediate goods were reduced to 10 percent, and tariffs on final goods were reduced to 15 percent. Per the tax reform law of 2002, import tariffs on cars were reduced from 40 percent to 15 percent ad valorem, and a tariff based on engine size was eliminated. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will be immediately eligible to enter Honduras duty free, with the remaining tariffs on such goods being eliminated within ten years. Textiles and apparel will be duty-free and quota-free immediately if they meet the agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

Honduras implements a combination price band and absorption agreement for corn, grain sorghum, and corn meal. Under the price band mechanism, duties can vary from 5 to 45 percent, depending on the import price. The duty for these products drops to 1 percent if the end users agree to first purchase a predetermined amount of corn and sorghum from domestic farmers - otherwise, the higher tariffs of the price band mechanism remain in effect. The tariff reduction only takes place during non-harvest season (March through August) and only end-users who have previously signed the absorption agreement may apply for this preferential treatment. A similar absorption agreement exists for rough rice, where duties are 1 percent for signers of the agreement and 45 percent for everyone else. The United States has strongly opposed the Honduran policies on these grains as limiting access for U.S. agricultural products.

When implemented, the CAFTA will lead to the elimination of this system for all products but white corn. Tariffs on all other agricultural products will be eliminated within 15 years after

the agreement takes effect, except for tariffs on rice, which will be phased out over 18 years, and tariffs on some dairy products, which will be phased out over 20 years.

The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Honduras committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.
Honduras implemented the WTO Customs Valuation Agreement in February 2000.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Application of sanitary and phytosanitary requirements is sometimes lacking in transparency, resulting in uncertainty among U.S. suppliers and Honduran importers. Honduras committed during the CAFTA negotiations to resolve these issues (see below).

In both 2002 and 2003, Honduran importers had initial difficulty in receiving permission to import turkey into Honduras, though in each year permission was eventually granted. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork and dairy products.

Since 2002, Honduras has imposed a ban on poultry products from a number of states in the U.S., due to concerns over low-pathogenic avian influenza (LPAI). The ban was revised and renewed in March 2004 in spite of World Organization for Animal Health (OIE) guidelines that the presence of LPAI does not justify trade restrictions, and despite information provided to GOH officials by USDA indicating the dates on which depopulation and surveillance testing were completed in the affected states. The U.S. Department of Agriculture estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional $10 million of poultry products to Honduras annually.

In December 2003, Honduras imposed a ban on the import of U.S. beef and its derivatives, in response to the detection by USDA of a case of Bovine Spongiform Encephalopathy (BSE, commonly known as "mad cow" disease) in Washington state. The ban was applied in accordance with guidelines issued by the OIE (World Organization for Animal Health), and did not include dairy products or other products considered to carry no risk of BSE. On June 2, 2004, the Honduran government lifted the ban in response to increased safety measures taken by the U.S. authorities.

In January 2004, U.S. rice exporters complained that they were being to forced to fumigate with methyl bromide shipments of U.S. rice that had false smut present before the shipment would be allowed into Honduras. This restriction added costs and delays to the shipping, and is not justifiable on food safety grounds. (The presence of false smut is a quality issue, but the GOH imposed restrictions as if it were a health issue.) In September 2004, the GOH authorities stopped requiring fumigation in response to information provided by APHIS on the practice.

The Honduran government requires that sanitary permits be obtained from the Ministry of Health for all imported foodstuffs, and that all processed food products be labeled in Spanish and registered with the Division of Food Control (DFC) of the Ministry of Health. During 2003, a U.S. supermarket chain complained that delays in the process of granting these permits were hampering the company's ability to import its products into Honduras. The Ministry of Health agreed to accelerate the process by focusing most closely on products considered to be at high risk for sanitary concerns (such as raw meat) and simplifying the procedures for low-risk products. However, during 2004, the company complained that these regulations were not being strictly enforced for many of its Honduran competitors, a complaint that post finds credible. This lack of enforcement on the part of the Honduran government places any U.S. company which does comply with the regulations at a disadvantage.

The embassy has also received complaints from a regional supermarket chain which, in 2003, imported more than $40 million worth of U.S. goods into the region, and believes the amount of its imports into Honduras could grow significantly, given a more transparent and efficient process of granting sanitary permits. Specifically, the company has complained that the length of time required for a sanitary permit to be granted (usually 2 to 3 months) is too long, that the cost of a permit ($500 - $600) is excessive, and that the application requires information that is difficult to obtain and has little to do with the safety of the product in question.

Under the CAFTA, Honduras agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Presently, Honduras may import meat products only from individual U.S. plants that have been pre-certified by Honduran food safety authorities.

When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on the resolution of outstanding issues even after the negotiations concluded. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Honduras and the United States have also been agreed.

GOVERNMENT PROCUREMENT

Honduras is not a party to the WTO Government Procurement Agreement. Under the Government Contracting Law, which entered into force in October 2001, all public works contracts over one million lempiras (approximately $53,850 as of December 2004) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras ($26,925 and $53,850) can be offered through a private bid, and contracts less than 500,000 lempiras ($26,925) are exempt from the bidding process. Currently, to participate in public tenders, foreign firms are required to act through a local agent (at least 51 percent Honduran-owned). The CAFTA eliminates this requirement.

While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. In 2004, a U.S. insurance company participated in a bid to provide insurance to the state-run electricity company, ENEE. The U.S. company was eliminated from consideration on grounds that it considers to be unreasonable. Every other company that participated except one was also eliminated for various technical reasons, leaving only one company to "compete" on price. All of the eliminated companies, including the U.S. company and several Honduran companies, have together denounced the management of the bidding process as having been contrary to the Government Contracting Law, and they have submitted a complaint to the Supreme Court of Accounts (Tribunal Superior de Cuentas), the GOH's general accounting and public ethics office. That case remains pending.

One way that the GOH has tried to improve transparency and fairness in government procurement is by hiring the United Nations Development Program (UNDP) to manage procurement for an increasing number of ministries and state-owned entities. However, U.S. companies have still expressed concerns about the way that UNDP has managed major procurements for the government. Specifically, during 2004, two U.S. companies, participating in two separate bid processes, complained that the bid requirements were written so narrowly that they favored a particular company from the outset. One of these companies also complained that, while a process for the participating companies to provide feedback did exist, their concerns about the unreasonable terms of reference did not seem to be taken into account. A third U.S. company complained about UNDP management of an invitation-only, limited-bid process, saying that the criteria for being invited to bid were not transparent.

Under the CAFTA, U.S. suppliers will be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA's anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

Honduras does not have export subsidies or export-promotion schemes other than the tax exemptions given to firms in free trade zones. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Honduras largely complied with the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement by the January 1, 2000, deadline. In December 1999, the Honduran Congress passed two laws to reform previous legislation concerning copyrights, patents, and trademarks. However, the Honduran Congress must still pass laws governing the design of integrated circuits and plant variety protection to be in complete TRIPs compliance. In the CAFTA, Honduras agrees to ratify or accede to the International Convention for the Protection of New Varieties of Plants by January 1, 2006, or provide effective patent protection for plants by the date of entry into force of the agreement.

Honduras has been a member of the World Intellectual Property Organization (WIPO) since 1983. Honduras and the U.S. initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but both parties decided to fold the provisions into the CAFTA, which, once implemented, will strengthen intellectual property rights protection in all areas. Honduras became party

to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) in May 2002.

CAFTA provisions will strengthen Honduras' IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded, even when it is difficult to assign a monetary value to the violation.

Copyrights

Honduras' copyright law, updated in 1999, added more than twenty different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. However, the piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras, due to limited enforcement capacity. A spot survey by an industry-sponsored IPR advocacy group found that nearly 75 percent of all compact discs for sale in Honduras' markets were pirated. The Public Ministry, which is responsible for prosecuting crimes, assigns just one prosecutor half-time to intellectual property crimes. As a result, U.S. companies which have tried to pursue software infringement cases have received little co-operation from the Honduran authorities. U.S. software companies are also pushing for ministries and state-owned entities to legalize the pirated software that many currently use. A major U.S. software company has estimated that it loses $5 million annually due to software piracy in Honduras. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

The piracy of cable television signals is also a problem in Honduras. During 2004, two different U.S. companies claimed that their competitors were broadcasting pirated cable television signals from the United States, and complained that the Honduran authorities do not vigorously investigate and prosecute these activities.

Patents and Trademarks

Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks currently must be registered with the Ministry of Industry and Trade. The CAFTA will eliminate cumbersome registration requirements.

Modifications to the Patent Law of 1993 included patent protection for pharmaceuticals, and extension of the term of protection for a patent from seventeen to twenty years from the date of filing, to meet WTO standards. The term for cancellation of a trademark for lack of use was extended from one year to three years. Trademarks are valid for up to ten years from the registration date. The illegitimate registration of well-known trademarks has, however, been a persistent problem in Honduras. The CAFTA enforcement provisions are designed to help reduce trademark piracy.

U.S. pharmaceutical companies have complained that the Ministry of Health, in approving competing companies' pharmaceutical products, has often failed to respect data exclusivity rights as guaranteed under article 39 of the WTO TRIPs agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The CAFTA obligations clarify that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

SERVICES BARRIERS

Currently, special government authorization must be obtained to invest in the tourism, hotel, and banking services sectors. Foreigners may neither hold a seat on nor provide direct brokerage services in Honduras' stock exchange. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

Under the CAFTA, Honduras will accord substantial market access in services across their entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Honduras will allow U.S.-based firms to offer cross-border services in areas such as financial information and data processing, and financial advisory services. In addition, Central American mutual funds will be able to use foreign-based portfolio managers. The commitments in services cover both cross-border supply of

services as well as the right to invest and establish a local services presence (such as in tourism or securities). Market access to services is supplemented by requirements for regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

INVESTMENT BARRIERS

The Constitution of Honduras requires that all foreign investment complement, but not substitute for, national investment. Currently, the Government of Honduras must approve any foreign investment in sectors including telecommunications, basic health, air transport, insurance and financial services, private education, and most sectors related to natural resources and farming. Foreigners are barred from small-scale commercial and industrial activities with an investment less than 150,000 lempiras (about $8,078). Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, though tourism investment laws allow for certain exceptions. Inadequate land title procedures, including overlapping claims and a weak judiciary, have led to numerous investment disputes involving U.S.-citizen landowners. Under the CAFTA, U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Honduras on an equal footing with local investors.

In 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The treaty provides for equal protection under the law for U.S. investors in Honduras and permits expropriation only in accordance with international legal standards and accompanied by adequate compensation. U.S. investors in Honduras also have the right to submit an investment dispute to binding international arbitration.

Honduras has taken the following limited exceptions to its BIT national treatment obligation: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras, small scale industry and commerce with total invested capital of no more than $40,000 or its equivalent in national currency, ownership, operation and editorial control of broadcast radio and television, ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

Under current Honduran law, the government-owned telephone company Hondutel maintains monopoly rights over all fixed-line telephony services. However, in 2003 the government began to allow foreign investors to participate in fixed-line telephony services as "sub-operators" in partnership with Hondutel. At present, approximately 40 firms have entered into "sub-operator" contracts with Hondutel, of which five firms are already providing services to the public. By law, Hondutel's monopoly expires in December 2005, and the government of Honduras has announced plans for full privatization of Hondutel thereafter. Both foreign and domestic firms already enjoy full rights to invest in cellular telephony services.

In July 2004, the Minister of Natural Resources and the Environment issued a decree calling for a new national policy on mining, and ordering the government agency responsible for granting mining permits and concessions, DEFOMIN, to stop granting any new mining concessions. This decision affected a U.S. company that already operates in Honduras and was planning to expand its operations, which had applied for additional concessions in late 2003. The same company has also been waiting for over a year for the environmental permit to operate a separate mine, and as of December 2004 has received neither permission, nor denial, nor an explanation of the status of the application. Other U.S. companies also complained during 2004 that the GOH seems to no longer welcome foreign investment in the mining sector.

In the investment chapter of the CAFTA, Honduras will commit to provide a higher level of protection for U.S. investors than under the existing BIT. The CAFTA requires that all forms of investment be protected, including enterprises, debt, concessions, contracts and intellectual property. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

Honduras currently has no domestic legislation concerning electronic commerce, as the sector is still not developed in the Honduran market. The Electronic Commerce System Directorate (DISELCO), a joint project of the Chamber of Commerce and

Industry of Tegucigalpa (CCIT), the Chamber of Commerce and Industry of Cortes (CCIC), and the National Industry Association (ANDI), is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras.

Although improving, the country still lacks adequate basic telecom infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce. Except for web page promotional material, companies are not utilizing computer-based sales as a substantial distribution channel in Honduras.

Under the CAFTA, Central America and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. As it develops its electronic commerce sector, Honduras joined other parties in committing to non-discriminatory treatment of digital products and agreeing not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

OTHER BARRIERS

Anti-Competitive Practices

U.S. investors who set up businesses in Honduras at times find themselves subject to forms of competition that, in the U.S., would be considered unfair business practices. In 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. The two established companies engaged in a campaign of predatory pricing that brought cement prices below the cost of production. After the U.S.-Japanese venture dropped out of the market, prices returned to their earlier level. While such actions might be illegal in the U.S., there is currently no law against predatory pricing in Honduras, although a draft competition law, which would address certain types of anti-competitive behavior, is currently before a congressional committee.

Corruption

Historically, U.S. firms and private citizens have found corruption to be a problem which seriously complicates doing business in Honduras, thus creating a constraint on foreign direct investment. Corruption appears to be most pervasive in the areas of government procurement, performance requirements, the regulatory system, and the buying and selling of real estate, particularly land title transfers. Honduras' judicial system is easily influenced; investment and business disputes involving foreigners have rarely been resolved in a transparent manner. The administration of justice is a key challenge to domestic and foreign companies. With considerable U.S. help, the government is reforming Honduras' judicial system and fighting corruption, though progress has been extremely slow and serious problems remain in these areas. Anti-corruption provisions in the CAFTA aim to help alleviate these problems, particularly by criminalizing the bribery of a public official in any area related to trade and investment.

Palmer